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TOWN ATTORNEY REPORT

DATE: June 27, 2001
FROM: Monroe D. Kiar 
RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** The Town Attorney's Office prepared a letter to the attorneys for the City of Sunrise regarding these negotiations and the limited amount of documentation provided by Sunrise to Mr. Cohen and requesting that the City of Sunrise provide all documentation listed therein. The letter was mailed to Attorney Susan Fleishner Kornspan requesting the extensive documentation needed by Mr. Cohen and any other expert retained by the Town of Davie in order to enter into meaningful negotiations with the City of Sunrise for the acquisition of the water and sewer system.
2. **Ordonez, et al v. Town of Davie:** As the Council has been previously advised, shortly before this matter went to trial, the League of Cities offered the plaintiffs \$75,000.00 to settle this matter. The plaintiffs initially accepted this offer and thereafter, the attorney for the plaintiffs indicated that he did not have authority to accept the settlement offer and the court so ruled that the plaintiff was not bound by the settlement agreement and set it aside. At the trial, the jury returned a zero verdict. The plaintiffs have until July 12, 2001 within which to file a notice of appeal if further review is sought before the United States Court of Appeals for the 11th Circuit. Mr. Burke has indicated that he does not believe that there was any harmful error committed during the trial and as a result, does not anticipate that the plaintiffs will have a basis for filing an appeal in this lawsuit.
3. **Sessa v. Town of Davie (Forman):** The parties have executed a Stipulation Agreement agreeing to binding mediation. The Stipulation was approved by the Court and binding mediation has been tentatively scheduled for Fall, 2001 before Retired Judge Gerald Mager.
4. **Coastal Carting Ltd., Inc. v. City of Sunrise, et al:** This matter has been settled by the Resource Recovery Board and the plaintiffs, Waste Management and Coastal Carting, Ltd. The Town is to be dismissed as a defendant in this lawsuit and is to receive a special

limited release discharging it of any liability as to any of the claims or causes of action raised against the Town in this litigation. In the meantime, another entity is seeking to intervene in this lawsuit and has filed a Memorandum of Law in Opposition to the Defendants' Joint Motion to Vacate the Court Order of May 5, 1999 which granted the original plaintiffs' Motion for Summary Judgment. Mr. Bruce Johnson, our outside legal counsel, feels that this new party that is seeking to set aside the Settlement Agreement in this lawsuit and whose Motion to Vacate remains pending, will not be successful. In response to the Motion to Vacate, Mr. Burke has filed a Memorandum of Law in Opposition to the Motion to Vacate. The Motion to Vacate continues pending.

5. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A final hearing on the Petition for Writ of Certiorari will be conducted sometime during the Court's 4 week trial docket commencing July 30, 2001. Mr. Burke and the other side have met with the Mayor and Councilmembers individually to discuss further the status of this case. It is anticipated that it should be in the early part of August, 2001 when the matter is tried. It is also anticipated that oral argument on the motions will take approximately 1/2 day.
6. **MVP Properties, Inc.:** The United States District Judge Paul C. Huck has granted the Town of Davie's Motion for Summary Judgment and has entered a Final Summary Judgment in favor the Town of Davie and against the plaintiff, MVP Properties, Inc. The plaintiff, MVP Properties, Inc. filed a Motion for Reconsideration in this matter and Judge Huck entered an Order denying plaintiff, MVP's Motion for Reconsideration. Plaintiff, MVP has until July 19, 2001 within which to file a notice of appeal in the event MVP seeks further review of the matter by the United States Court of Appeals for the 11th Circuit. A copy of the Court's Order denying plaintiff, MVP Properties, Inc.'s Motion for Reconsideration is annexed hereto as an Exhibit. Judge Huck had held that the Town's regulations concerning the requirements for an entrance gate feature in low density residential developments does not impact any of plaintiff, MVP's fundamental civil rights and that the general requirement that an entrance gate feature be used in conjunction with the secure perimeter wall is rationally related to furthering a legitimate public purpose and that MVP abandoned its request for a gated entrance feature rather than seek Town Council approval to install a gated entrance without construction of a perimeter wall. Mr. Burke has filed a Motion to Tax Costs against the plaintiff.
7. **Cummings v. Town of Davie:** The Town Attorney's Office prepared a draft of the Stipulation of Settlement in this case which has now been executed by Mr. and Mrs. Cummings. The executed Stipulation for Settlement has been sent to the Town Clerk for placement on the July 2, 2001 Town Council Meeting Agenda for the Council's review and approval. The Council had previously authorized the Town Attorney's Office to accept the settlement proposal now outlined in the Stipulation for Settlement at an executive session.
8. **Department of Community Affairs v. Town of Davie:** On May 25, 2001 the Town of Davie Local Planning Agency met, at which time it considered an Ordinance of the Town

of Davie, Florida amending the text of the Town of Davie Comprehensive Plan by amending the transportation element to revise the level of service standard for Interstate 595 pursuant to the Stipulation Settlement Agreement with the Florida Department of Community Affairs (DOAH Case No. 99-1308 GM). The Local Planning Agency voted 4-1 to recommend approval of the proposed amendment. The Ordinance provides that the revised level of service measurement allows projects to be approved so long as the traffic generated does not degrade below the LOS D in the peak direction. The intent is for development along I-595 to be of a type which does not generate excessive or frequent vehicle trips. The approval of the change of the text of the transportation element of the Comprehensive Plan as recommended by the Local Planning Agency was presented to the Town Council at its subsequent Council Meeting where it was approved by the Davie Town Council. After approval by the Town Council, the revised language shall be submitted to the Department of Community Affairs for its review and to determine if the amendment is in compliance with the Department's standards.

9. **Town of Davie v. Malka:** The Town Attorney's Office has been in contact with the Code Enforcement Officer, who reports that the Building Official, Mr. Sprovero is preparing the necessary requirements to have this matter placed on the July meeting of the Unsafe Structures Board. Further, the Deputy Building Official and the Code Enforcement Inspector went to the site and took photographs to be entered into evidence at the Unsafe Structures Board Meeting.
10. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The Florida Department of Agriculture filed an Appeal of Judge Fleet's Order in which the Judge ruled in favor of Davie, the County and other cities enjoining the Florida Department of Agriculture and Consumer Services from further cutting of healthy citrus trees in Broward County. Oral argument was heard on June 6, 2001 and on June 20, 2001, the 4th District Court of Appeals reversed Judge Fleet's ruling in which he enjoined the Department of Agriculture and Consumer Services from cutting down healthy, but exposed trees within a 1900 foot radius of an infected tree. The 4th District Court of Appeals remanded the case back to the Circuit Court with directions to vacate the Injunction and dismiss for failure to exhaust administrative remedies. The Opinion however, indicates that it is not final until the disposition of any timely filed Motion for Re-Hearing. The Town Attorney's Office has been in contact with the County Attorney and he has indicated that he anticipates filing a timely Motion for Re-Hearing. Additionally, the coalition of cities and the County had previously filed a rule challenge with the Division of Administrative Hearings challenging the emergency rule of the Florida Department of Agriculture and Consumer Services relevant to the 1900 foot radius for cutting down of healthy, but exposed trees. With regard to the Court's ruling that the plaintiff should have sought a stay in the 4th District Court of Appeals, it has been the position and remains the position of the plaintiffs that it would have been nearly impossible for thousands of individual homeowners who are unfamiliar with the law to be expected to know to file an appeal within 5 days of the issuance of an IFO by the Department of Agriculture.

11. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie has filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed the case from the trial docket pending its ruling on our Motion for Summary Judgment. There is a good likelihood therefore, that even if our Motion for Summary Judgment is not granted, that this lawsuit will not be heard before the end of the year, should it go to trial.
12. **Reinfeld v. Town of Davie, et al:** The Florida League of Cities attorney assigned to represent the individual defendants, Mr. Marrero, has filed Motions to Dismiss the two individual defendants. Further, Mr. Michael Burke, who was assigned by the League to represent the Town, has filed his response in this case. After the filing of its initial Complaint and the Motion to Dismiss by Mr. Marrero, the plaintiff filed an Amended Complaint in which she has dropped one of the individual defendants from the lawsuit.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 99-7590-CIV-HUCK

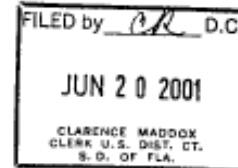
MVP PROPERTIES, INC.,

Plaintiff,

vs.

TOWN OF DAVIE,

Defendant.




ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

THIS CAUSE is before the Court on the Plaintiff, MVP Properties, Inc.'s ("MVP") Motion To Reconsider and to set aside the order granting Defendant, Town of Davie's ("Town") motion for summary judgment and resulting final judgment in favor of the Town. The Court has reviewed MVP's motion, together with supporting memorandum, the Town's opposition memorandum and MVP's reply memorandum. Based on this review, the Court determines that MVP has not shown a sufficient reason for this Court to reconsider its order granting the summary judgment. Therefore, it is

ORDERED that MVP's Motion for Reconsideration is DENIED.

DONE AND ORDERED in Chambers, Miami, Florida this 19th day of June, 2001.


Paul C. Huck
United States District Judge

Copies furnished to:
Mitchell J. Olin, Esq.
Michael Burke, Esq.